IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 49 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

PALLAK TRAVELS THROUGH ITS PROPRIETOR GAUTAMBHAI A PATEL
Versus
STATION HOUSE OFFICER

Appearance:
MR RK MISHRA for Petitioner
MR. P.G. DESAI, GP for Respondents

CORAM : MR.JUSTICE A.K.TRIVEDI
Date of decision: 04/02/98

ORAL JUDGEMENT

1. Rule. Shri P.G. Desai, learned GP appears and waives service of Rule on behalf of Respondents. By the consent of the parties, the matter is taken up for final hearing.

2. The petitioner has challenged the legality and propriety of the order passed by JMFC, Jetpur, dated

27.1.1998 and has contended that the Police Authority at Jetpur Police Station, Taluka Jetpur, District Rajkot has no authority to detain the vehicle owned by the petitioner and thereby has also made a prayer for direction to said Police Authorities to release the said vehicle which is described as Mini Luxury Bus No. GJ-1-V-1646.

3. Shri R.K. Mishra, learned advocate appearing on behalf of the petitioner has submitted that petitioner is the owner of Mini Luxury Bus. That on 20.9.1997 at about 1430 hours, said Mini Luxury Bus was detained by the subordinate staff of the respondent attached with Police Station at the place near Virpur Highway. That detention memo, which is produced at running page No.7 of the paper book, was issued, which contains the information that said vehicle was being used to commute 31 passengers from Rajkot to Doraj and to Upleta as well as to Bhayavadar and other places in violation of terms and conditions stated in the permit issued. That the said vehicle was being plied in public place without keeping necessary documents of Registration and Permit, etc., as required under the provisions of Motor Vehicles Act, 1988 and thereby vehicle was detained under the provisions of Section 207 of Motor Vehicles Act, 1988. The copy of the memo was sent by detaining officer to the Police Station, Jetpur.

4. Shri Mishra has further submitted that the petitioner having come to know the fact about detention of the said vehicle, had filed Spl. Criminal Application No. 1567 of 1997 in this Court and had made a prayer for declaration that act of Police Officer, Jetpur, detaining the vehicle of the petitioner without registering any offence and sending non-cognizable compliant to the court being without jurisdiction arbitrary, unconstitutional, null and void. It was also prayed for further declaration that such act of the Police Officer being in violation of the fundamental rights of the petitioner conferred by Articles 21 and 19(1)(g), etc of the Constitution of India, is also arbitrary, unconstitutional and thereby respondent be directed to take suitable action against the concerned Police Officer. That the Spl. Criminal Application No. 1567 of 1997 was notified for admission on 11.12.1997 and vide order dated 11.12.1997 it was disposed of as withdrawn by the petitioner. Shri Mishra has submitted that as per the observations made by this Court in the said order to the extent that in order to take custody of the detained vehicle, the petitioner would approach to the concerned court of Judicial Magistrate, First Class, under the

provisions of Section 457 of the Code of Criminal Procedure and may get appropriate remedy. That such remedy being alternative efficacious remedy, there was no justification for granting any writ, order or direction as prayed by the petitioner in the said petition. That thereby the petitioner approached the court of Judicial Magistrate, First Class, Jetpur, and requested to hand over the custody of the said detained vehicle. That the impugned order, certified copy of which is produced at page 11 of the petition, was passed on 27.1.1998, whereby the court has directed to give possession of subject vehicle to the petitioner on condition of making payment of Rs. 1,54,976 the outstanding dues of RTO in the mode and manner stipulated in the order. That accordingly, Rs. 50,000/- was to be paid on 5.2.1998 and the remaining amount was to be paid by five equal monthly installments, payable by 10th of every English Calendar month. That petitioner was directed to move competent RTO Officer to waive and/or to reduce the amount of Rs.38,784/- imposed as penalty. It is also ordered that in the event of any default committed by the petitioner in making the payment of any installment, the RTO Authority shall be entitled to seize and detain the said vehicle again.

5. It is contended by Shri R.K. Mishra that subject vehicle was seized and detained as per the provisions of Section 207(1) of the Motor Vehicle Act, 1988 (hereinafter referred to as the "Act). Section 192-A of the Act also describes the said act of plying vehicle in public place in contravention of conditions prescribed under Section 66(1) of the Act as an offence punishable for the first time with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with the imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees both. However, the section also prescribes that the court may for reasons to be recorded impose a lesser punishment.

6. Shri Mishra has submitted that the offence prescribed under Section 192-A of the Act is not compoundable under the provisions of the Act and thereby the petitioner instead of going to RTO Authority has approached this court to quash and set aside the order passed by the learned JMFC because the condition imposed by that impugned order is too harsh compelling the petitioner to make higher payment than the maximum amount prescribed as fine under Section 192-A of the Act. Shri

Mishra has further submitted that the petitioner is a middle class business man and is not in a position to make payment of such high amount as prescribed under the condition of impugned order and thereby this court should take a lenient view and in the alternative the court may reduce the amount so that the petitioner can get the custody of the vehicle.

7. Having given my anxious thought to the facts and circumstances apparent from the record, in my opinion, submissions made on behalf of the petitioner cannot be accepted for more than one reasons. It may be noted that Section 207(2) provides a remedy to the owner of the vehicle which is seized and detained under Section 207(1) and if the owner of the vehicle is in possession of valid Registration documents and Permit as required under Section 66(1) of the Act, the owner could show the same to the concerned authorities and get the vehicle released. The petitioner in the instant case, has conveniently avoided the said course of action which leads to the inference that petitioner was plying the vehicle on a public place in violation of condition prescribed by Section 66(1) of the Act. That it is not in dispute that Respondent No.2 authority has power to assess penalty for breach of terms and conditions as prescribed under Section 66(1) of the Act. That material produced on record by the petitioner along with the impugned order also contain a notice issued by respondent No.2 to the petitioner dated 22.01.1998. It appears from the notice that an aggregate amount of Rs. 1,93,760/- is recoverable from the subject vehicle on account of outstanding tax for the period from 1.1.96 to 30.9.1997 inclusive of penalty of Rs. 38,784. On the basis of the said fact, it could be said that in order to get the vehicle released from RTO authority or police authority holding the vehicle on behalf of the RTO, the petitioner is required to pay the tax and penalty both which is to the extent of Rs. 1,93,760/-.

8. That Section 457 of the Criminal Procedure Code prescribes a procedure for disposal of property brought before the court. Sub-sections (1) & (2) of Section 457 are as under :

457. Procedure by police upon seizure of Property:

(1) Whenever the seizure of property by any Police Officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an

inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

9. That the learned Judicial Magistrate, First Class, Jetpur, appears to have applied the provisions of Section 457(2) of the Criminal Procedure Code and had granted indulgence to the present petitioner to discharge the outstanding liability by making payment of Rs. 50,000/- on or before 5.2.1998 and the remaining amount by five equal monthly installments and had directed to hand over the custody of the subject vehicle. On appreciation of the above stated facts and circumstances, in my opinion, while passing the said order, the trial court has not committed any jurisdictional error or any illegality whereby any miscarriage of justice has occurred. The petitioner, who is having the liability to pay the legitimate dues of Respondent No.2, cannot claim the custody of the vehicle. Further more, the petitioner has further remedy to approach the respondent No.2 and on payment of outstanding dues in respect to the said vehicle, the petitioner can get the custody.

10. On the basis of the above stated facts and circumstances, I hold that the present Criminal Revision Application fails as no interference in the impugned order as challenged by the petitioner is warranted. Hence petition stands disposed as rejected with no order as to costs. Rule is discharged.

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